



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/241,823	02/01/99	ZIESE	K 062891.0240

TM02/0201

TERRY J STALFORD
BAKER & BOTTS
2001 ROSS AVENUE
DALLAS TX 75201-2980

EXAMINER

DAM, T

ART UNIT

PAPER NUMBER

2122

DATE MAILED:

02/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/241,823

Applicant(s)

Ziese

Examiner

Tuan Q. Dam

Group Art Unit
2122



☒ Responsive to communication(s) filed on Feb 1, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-24 is/are pending in the applicat

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-24 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). see action

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

DETAILED ACTION

1. Claims 1-24 are presented for examination.

Information Disclosure Statement (IDS)

2. Although the IDS filed Mar 8, 1999, paper no. 2, comply with 37 C.F.R. 1.56(a), 1.97 and 1.98. However, an enormous provided non-patent documents, at a quick scanning through of the titles, appear to be related to such subject matters as security audit trail analyses, intrusion detection, monitoring techniques and systems art (intrusion detection per se - background art), wherein the instance application invention claim direct toward a manner of a method, a system for dynamically distributing updates in a network, e.g., updating a program in response to an automated/timed event, only, regardless of how such intrusion detection signatures and/or techniques have been implemented. Moreover, note that, such intrusion detection systems per se already have been acknowledged by the Applicant in the background of the invention at page 3 of the specification. Thus, it imposes a rather much unnecessary burden on the examiner and the Office to further consider more, well known, background arts. Applicant is encouraging to point out which particular document(s) wishes to be retained and be considered by the examiner for his claimed invention is much appreciated.

Therefore, the IDS-paper no. 2 which only the information referred to patent documents has been considered (PTO-1449, pp. 1 & 4 of 10), but particularly non-patent documents information, referred to therein (PTO-1449, pp. 2, 3 & 4-10), has been placed in the application filed but has not been considered as to the merits.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-8 & 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Hoff et al '5,919,247' (hereinafter *Van Hoff*).

As per claim 1, *Van Hoff* discloses a system and method for distributing (updating) software applications and data to clients over a connection based network (See FIGs. 1A, Abstract and at col. 2:50-67), wherein channels (applications/programs) can be downloaded and/or updated automatically at regular intervals (automated/timed event) by the tuner (client application). And in that *Van Hoff* teachings including the steps of:

“in response to an automated event, automatically downloading...any update for the program” (E.g., see FIGs. 1A-1E and associated text; and at col. 3:10-13 which states “At regular intervals (automated event) the tuner can re-establish a connection to the transmitter (server component) from which the channel was obtained and check...If changes are detected, these changes are downloaded and installed automatically”);

“installing a downloaded update to generate a second version of the program” (E.g., again see FIG. 1B channel data 161 and associated text, e.g., at col. 4:52-57); and

"operating the second version...in place of the first version at the network site" (E.g., again see channel data 161, as noted above).

As per claim 2, *Van Hoff* also discloses *"the automated event is a timed event"* (E.g., see col. 5:14-16, as tuner process 152 using a timer, and also as noted above).

As per claim 3, *Van Hoff* also discloses *"aging the first version of the program"* (E.g., see FIG. 6B step 615 determine delay until next update and associated text, e.g., at col. 10:24-25); and *"the timed event...reaching a specified age"* (E.g., see col. 10:31-32, as delay default value is 0 minutes).

As per claim 4, *Van Hoff* also discloses *"the specified age is less than or equal to twenty-four hours"* (E.g., again see delay default value as noted above).

As per claim 5, *Van Hoff* also discloses *"the timed event occurs at least once a day"* (E.g., again see delay default value as noted above).

As per claim 6, *Van Hoff* also discloses such claimed limitations as noted in claim 1 above (E.g., again see col. 3:10-13).

As per claim 7, *Van Hoff* also discloses *"encrypted format"* (E.g., see col. 12:38-41) and such a *"decrypting"* step is deemed to be inherent in *Van Hoff* system. In order to install and/or use the, encrypted, downloaded update data, *Van Hoff* system must decrypting the downloaded update data prior to installation, otherwise inoperative.

As per claim 8, *Van Hoff* also discloses *"authenticating"* (E.g., again see col. 12:38-46).

As per claim 15, *Van Hoff* also discloses "*the remote site is an Internet web page*" (E.g., see FIG. 1B Web browser 151 and associated text, e.g., at col. 12:63 to col. 13:6).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9, 10-14, and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Van Hoff* as applied to claim 1 above, and further in view of common wisdom practice in the art, or well known art (intrusion detection per se).

As per claim 9, *Van Hoff* does not explicitly disclose "*restoring the first (old) version*". However, *Van Hoff* also discloses the use of a holding space 155 (See FIG. 1B and associated text, e.g. at col. 9) for avoiding update data may corrupt during transaction. Thus, it would become apparent to one skilled in the pertinent art at the time of the invention was made to recognize that when such an update data (second version) is inoperable, for what ever the cause(s), then it is a common wisdom practice to restore the old, current operational data (first version) so that such system can be operated, in which *Van Hoff* already provide a means so that data can be retrieved from. Accordingly, it, restoring limitation, would also have been obvious.

As per claim 10, *Van Hoff* does not explicitly disclose “*distributing the download update to a disparate network site operating the first version*”. However, it would become apparent to one skilled in the pertinent art at the time of the invention was made to recognize that, concurrence operating (version) integrity is typically being maintained in a network, as common wisdom practice. Thus, at a regular interval as in *Van Hoff*, once such changes of a channel (first version) has been detected, as noted above, theses changes (update or second version) would also have been provided and/or distributed to other members (disparate network site) in the network that currently operating with the first version. Accordingly, distributing the changed or second version, as enforcing, to other network’s members (disparate network sites) would also have been obvious.

As per claim 11, such claimed limitations also have been addressed and set forth in claims 9 & 10 above.

As per claim 12, *Van Hoff* does not explicitly disclose “*broadcasting over a network an update message*”. However, *Van Hoff* also suggests such broadcasting features as an equivalent method (*See Abstract*). Moreover, such a broadcast distribution of software over a connection based network feature is well known in the computer software update, upgrade, and/or remote installation art. Thus, it would also become apparent to one skilled in the pertinent art at the time of the invention was made to utilize of such broadcasting feature, as claimed, in the update method that once taught by *Van Hoff*.

As per claim 13, such “*recovery event*” (restoring) also have been addressed and set forth in claim 9 above.

As per claim 14, *Van Hoff* does not explicitly disclose "*the program is a set of instruction detection signatures for an intrusion detection sensor*". However, such an intrusion detection program per se, as noted in item 2 above, IDS section, which is well known in the computer security art as also noted by the Applicant (*See* background art at page 3 of the specification). Thus, it would also become apparent to one skilled in the pertinent art at the time of the invention was made to implement and/or applying *Van Hoff* teachings for such an intrusion detection application since *Van Hoff* teachings regardless of what application (channel) being updated.

As per claims 16-21, this is another version of the method claimed discussed above, claims 1-6 & 14, wherein all claimed limitations also have been addressed as set forth above. Thus, the same rationales provided in the rejection of claims 1-6 & 14 above are also applied and incorporated herein.

As per claims 22-24, this is an apparatus version of the method claimed discussed above, claims 1, 2 & 14, wherein all claimed limitations also have been addressed as set forth above. Thus, the same rationales provided in the rejection of claims 1, 2 & 14 above are also applied and incorporated herein.

Conclusion

7. The background art of interest is cited by the examiner. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan Dam whose telephone number is (703) 305-4552. The examiner can normally be reached on

Serial Number: 09/241,823
Art Unit: 2122

Page 8

Tuesday-Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark R. Powell, can be reached on (703) 305-9703.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

Or:

(703) 305-0040 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., 22202. Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.



Tuan Q. Dam
Patent Examiner
Group Art Unit 2122
01/22/01